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EXAMINER

PEREZ GUTIERREZ, RAFAEL

ART UNIT	PAPER NUMBER
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2686

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/537,812

Applicant(s)

White et al.

Examiner

Rafael Perez-Gutierrez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2005 and 02 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40-81 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office Action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 2, 2005 has been entered. **Claims 40-81** are now pending in the present application.

Claim Objections

2. **Claims 63, 66, 76, and 77** are objected to because of the following informalities:
- a) On line 4 of **claim 63**, replace "links" with --link-- after "media";
 - b) On line 1 of **claim 66**, delete "a" before "broadcast";
 - c) On lines 1 and 2 of **claim 76**, delete "further comprising the digital engine operable to communication the audio file to the" before "wherein"; and
 - d) On line 3 of **claim 77**, replace "cellular" with --wireless-- after "the" in order to provide proper antecedent basis.

Appropriate correction is required.

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Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the Applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 59, 60, and 62** are rejected under 35 U.S.C. 102(a) as being anticipated by **Rydbeck et al. (WO 99/43136)**.

Consider **claim 59**, Rydbeck et al. clearly show and disclose a method for managing audio outputs for a cellular telephone 10 (communication device) (figures 1 and 2) comprising:

playing an audio file received via a cellular communication (e.g., playing back music or audio downloaded and received via transceiver 12, 18 from the Internet) (abstract, figures 1 and 2, page 2 lines 20-22, page 3 lines 4-6, page 6 lines 3-5 and 10-17, page 7 lines 1-6, and page 7 lines 22-25);

detecting an incoming cellular telephone call (page 7 lines 6-8);

altering playing of the audio file in response to detecting the cellular telephone call (page 7 lines 6-8).

Consider **claims 60 and 62**, and as applied to **claim 59** above, Rydbeck et al. inherently disclose playing a second audio file stored within a memory 54, 56 of the cellular device 10

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(figures 1-3) since they disclose that music and audio signals are loaded and stored in the memory 54, 56, of the device 10 (abstract, page 2 lines 20-22, and page 6 lines 3-25) and the music or audio signals can be received from a computer or a CD player (i.e., via a non-wireless communication network) (reads on **claim 62**).

5. **Claims 68-70 and 72-76** are rejected under 35 U.S.C. 102(e) as being anticipated by **Fritsch (U.S. Patent # 6,247,130 B1)**.

Consider **claim 68**, Fritsch clearly shows and discloses a wireless communication system (column 2 line 64 - column 3 line 9) comprising:

an Internet website provided in association with a cellular telephone (communication device) operable to receive and play an audio file (e.g., music) selected by a user accessing the Internet website external to the cellular telephone (communication device) (abstract, figures 1A-1D, column 1 lines 46-56 and 60-64, and column 2 line 64 - column 3 line 45);

a wireless communication network (inherently required to communicate the music to the cellular telephone) (column 2 line 64 - column 3 line 9) operable to communicate the audio file to the cellular telephone (communication device) identified through a user logging into the Internet website (abstract, figures 1A-1D, column 1 lines 46-56 and 60-64, column 2 line 64 - column 3 line 45, and column 4 lines 13-37); and

a server (digital engine) operable to determine availability (online status) of the cellular telephone (communication device) and to communicate the audio file to the cellular telephone (communication device) (abstract, figures 1A-1D, column 1 lines 46-56 and 60-64, column 2 line

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64 - column 3 line 45, and column 4 lines 13-37).

Consider **claim 69**, and **as applied to claim 68 above**, Fritsch further shows and discloses that the Internet website is operable to present a user login page in association with identifying the cellular telephone (communication device) (abstract, figures 1A-1D, column 1 lines 46-56 and 60-64, column 2 line 64 - column 3 line 45, and column 4 lines 13-37).

Consider **claim 70**, and **as applied to claim 69 above**, Fritsch also shows and discloses that the Internet website is operable to provide access to downloadable software (e.g., music player) operable to be communicated to the cellular telephone (communication device) (column 3 lines 60-65).

Consider **claim 72**, and **as applied to claim 68 above**, Fritsch further shows and discloses that the Internet website presents a link to a selectable preformatted audio file operable to be communicated to the identified cellular telephone (communication device) (figures 1A-1D and column 4 line 57 - column 5 line 20).

Consider **claim 73**, and **as applied to claim 72 above**, Fritsch also shows and discloses that the preformatted audio files may be categorized within the Internet website by at least two of: genre, artist, most popular, newest, most viewed, and favorites (figures 1A-1C).

Consider **claims 74 and 75**, and **as applied to claim 68 above**, Fritsch further shows and discloses that the server (digital engine) is operable to enable access to streaming audio information and to provide links to streaming audio accessible by the cellular telephone (communication device) (e.g., the server (digital engine) provides a link for accessing a 20-second music clip (streaming audio) by the cellular telephone) (figures 1A-1C and column 4 line

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57 - column 5 line 4).

Consider **claim 76**, and **as applied to claim 69 above**, Fritsch also shows and discloses that the audio file may be communicated to the cellular telephone (communication device) independent of a user being logged into the Internet website (e.g., the audio file (e.g., music) could be delivered to the user in several different ways besides immediate downloading (i.e., whether or not the user is logged into the Internet website) (column 3 lines 3-9, column 5 lines 14-37, and column 5 line 66 - column 6 line 39).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. **Claims 40, 41, 43-46, and 50-55** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Rydbeck et al. (WO 99/43136)** in view of **Lueck et al. (U.S. Patent # 6,721,710 B1)**.

Consider **claims 40 and 52**, Rydbeck et al. clearly show and disclose a cellular telephone 10 (communication device) (figures 1 and 2) (reads on **claim 52**) comprising:

an RF transceiver 18 (cellular communication module) (figure 2) operable to receive an incoming telephonic communication (abstract, figure 2, page 5 lines 4-6, and page 7 lines 6-8);

an entertainment (memory) module 50 (figures 2 and 3) operable to store one or more audio files (e.g., music or audio signals) received via a cellular communication network independent of the incoming telephonic communication (i.e., the music or audio signals are downloaded wirelessly from the Internet (not associated with an incoming telephonic communication)) (abstract, page 2 line 20 - page 3 line 3, page 6 lines 3-17, and page 7 line 22-25);

a microprocessor/control logic 20 (processor) (figure 2) operable to alter a playing of at

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least one of the audio files in response to the incoming telephonic communication (page 7 lines 6-8).

However, Rydbeck et al. do not specifically disclose that the entertainment (memory) module 50 store plural audio formats of one or more of the audio files.

Nonetheless, the feature of a memory module storing plural audio formats of one or more audio files is well known in the art as evidenced by Lueck et al., who, in the same field of endeavor, clearly show and disclose a portable digital audio player 100 (figure 1) comprising, among other components, a flash memory 140 (figure 1) operable to store plural audio formats (e.g., MP3 and AAC) of one or more audio files or songs (column 2 lines 61-67 and column 3 lines 10-12 and 47-51).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to store plural audio formats of one or more audio files, as taught by Lueck et al., in the entertainment (memory) module 50 disclosed by Rydbeck et al. for the purpose of providing alternative audio formats for user's selection.

Consider **claim 41**, and **as applied to claim 40 above**, Rydbeck et al., as modified by Lueck et al., further disclose that the microprocessor/control logic 20 (processor) (figure 2) is operable to stop playing of the audio file in response to the incoming telephonic communication (page 7 lines 6-8).

Consider **claim 43**, and **as applied to claim 40 above**, Rydbeck et al., as modified by Lueck et al., inherently disclose that the microprocessor/control logic 20 (processor) (figure 2) is operable to enable sequential playing of plural audio files since they disclose that plural music or

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audio signals are downloaded and stored in the entertainment (memory) module 50 for subsequent playback (abstract, page 2 line 20 - page 3 line 3, page 6 lines 3-17, and page 7 line 22-25).

Consider **claims 44 and 45**, and **as applied to claim 43 above**, Rydbeck et al., as modified by Lueck et al., disclose the claimed invention except that the processor is operable to first play a WAV file and second play an MP3 file (claim 44) and to first play a MP3 file and second play an WAV file (claim 45).

Nonetheless, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have the processor taught by Rydbeck et al., as modified by Lueck et al., to first play a WAV file and second play an MP3 file or viceversa since the processor is capable of playing plural audio formats (processor 110 is operable to store and play, respectively, plural audio formats (e.g., MP3 and AAC) of one or more audio files or songs (Lueck et al.; figure 1, column 2 lines 61-67 and column 3 lines 10-12 and 47-51). Applicant has not disclosed that first play a WAV file and second play an MP3 file and first play an MP3 file and second play an WAV file provides an advantage, is used for a particular function, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the entertainment (memory) module 50/processor 110 of Rydbeck et al. and Lueck et al. because they are capable of sequentially playing plural audio formats.

Consider **claim 46**, and **as applied to claim 43 above**, Rydbeck et al., as modified by Lueck et al., disclose the claimed invention except that the plural audio files include WAV files.

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Nonetheless, the Examiner takes Official Notice that it is notoriously well known in the art to provide audio or music files in the format of WAV.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have plural WAV files, as known in the art, in the cellular communication device disclosed by Rydbeck et al., as modified by Lueck et al., for the purpose of providing an alternative audio format for user's selection.

Consider **claim 50**, and **as applied to claim 40 above**, Rydbeck et al., as modified by Lueck et al., further disclose that the cellular telephone 10 (communication device) (figures 1 and 2) inherently comprises a low power RF carrier communication module (not shown) operable to communicate an output to a headset 40 (wireless speaker) (figures 1 and 2), the output including the playing of the at least one of the audio files or the incoming telephonic communication (page 3 lines 4-7, page 5 line 19 - page 6 line 8, and page 7 lines 4-8).

However, Rydbeck et al., as modified by Lueck et al., do not specifically disclose that the low power RF carrier communication module is a Bluetooth module.

Nonetheless, the Examiner takes Official Notice that it is notoriously well known in the art to use a Bluetooth communication module for short range, low power RF communications between communication devices.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a Bluetooth communication module, as known in the art, as the low power RF carrier communication module disclosed by Rydbeck et al., as modified by Lueck et al., for the purpose of providing standardized short range RF communication between the

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headset and the cellular telephone.

Consider **claim 51**, and **as applied to claim 50 above**, Rydbeck et al., as modified by Lueck et al., disclose the claimed invention except that it comprises a PDA.

Nonetheless, the Examiner takes Official Notice that it is notoriously well known in the art to have a cellular communication device comprising a PDA in order to provide additional handheld computing capabilities to a user.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have a PDA, as known in the art, in the cellular communication device disclosed by Rydbeck et al., as modified by Lueck et al., for the purpose of providing additional handheld computing capabilities to the user.

Consider **claim 53**, and **as applied to claim 40 above**, Rydbeck et al., as modified by Lueck et al., further disclose that the cellular telephone 10 (communication device) (figures 1 and 2) is an Internet-enabled cellular telephone operable to access a list of downloadable preformatted music or audio signals (files) (page 6 lines 10-25).

However, Rydbeck et al., as modified by Lueck et al., do not specifically disclose that the cellular telephone comprises a WAP browser.

Nonetheless, the Examiner takes Official Notice that it is notoriously well known in the art to use a WAP browser to access the Internet from a cellular telephone.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a WAP browser, as known in the art, in the cellular telephone disclosed by Rydbeck et al., as modified by Lueck et al., for the purpose of providing

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standardized wireless Internet access from the cellular telephone.

Consider **claim 54**, and **as applied to claim 40 above**, Rydbeck et al., as modified by Lueck et al., also disclose that the RF transceiver 18 (cellular communication module) (figure 2) is operable to receive music or audio signals (files) selected via an Internet website (i.e., inherent through the Internet-enabled cellular phone 10) external to the cellular telephone 10 (communication device) (page 6 lines 10-25).

Consider **claim 55**, and **as applied to claim 53 above**, Rydbeck et al., as modified by Lueck et al., further disclose that the entertainment module 50 (media player) is operable to play user selected media downloaded outside of a web browsing environment (e.g., loaded from a CD player or downloaded from a computer or a digitized audio source) (page 6 lines 3-17).

8. **Claims 42 and 47-49** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Rydbeck et al. (WO 99/43136)** in view of **Lueck et al. (U.S. Patent # 6,721,710 B1)**, as **applied to claim 40 above**, and further in view of **Cao et al. (U.S. Patent Application Publication # 2005/0054379 A1)**.

Consider **claim 42**, and **as applied to claim 40 above**, Rydbeck et al., as modified by Lueck et al., disclose the claimed invention except that the microprocessor/control logic 20 (processor) is operable to enable a user to alter the playing of the at least one audio file to answer the incoming telephonic communication.

In the same field of endeavor, Cao et al. clearly show and disclose a cordless telephone (communication device) with MP3 player capability (abstract) comprising, among other

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components, a processor (not shown) operable to enable a user to alter the playing of the at least one audio file (e.g., MP3 digital audio) to answer an incoming telephonic communication (paragraph 0023).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to enable a user to alter playing of the at least one audio file in response to an incoming telephone call, as taught by Cao et al., in the cellular telephone 10 (communication device) disclosed by Rydbeck et al., as modified by Lueck et al., for the purpose of providing manual operational control of the combined telephone/audio player.

Consider **claim 47**, and **as applied to claim 40 above**, Rydbeck et al., as modified by Lueck et al., disclose the claimed invention except that at least one of the audio files include a streaming audio formatted file.

In the same field of endeavor, Cao et al. clearly show and disclose a cordless telephone (communication device) with MP3 player capability (abstract) wherein at least one of the audio files comprises MP3 digital audio bit stream (streaming audio formatted file) downloaded from the Internet (abstract and paragraphs 0026 and 0034).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide a streaming audio formatted file, as taught by Cao et al., in the entertainment (memory) module 50 disclosed by Rydbeck et al., as modified by Lueck et al., for the purpose of providing alternative audio formats for user's selection.

Consider **claims 48 and 49**, and **as applied to claim 40 above**, Rydbeck et al., as modified by Lueck et al., disclose the claimed invention except that the microprocessor/control

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logic 20 (processor) is operable to pause playing of the audio file in response to the incoming telephonic communication (claim 48) and to enable listening of the telephone call upon answering the incoming telephonic communication (claim 49).

In the same field of endeavor, Cao et al. clearly show and disclose a cordless telephone (communication device) with MP3 player capability (abstract) comprising, among other components, a processor (not shown) operable to pause playing of an audio file (e.g., MP3 digital audio) in response an incoming telephonic communication (paragraphs 0023 and 0024) (reads on **claim 48**) and to enable listening of a telephone call upon answering the incoming telephonic communication (paragraphs 0023 and 0024) (reads on **claim 49**).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to pause playing the audio file and allow listening of the telephone call, as taught by Cao et al., in the cellular telephone 10 (communication device) disclosed by Rydbeck et al., as modified by Lueck et al., for the purpose of avoiding missing telephone calls.

9. **Claims 56-58** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Rydbeck et al. (WO 99/43136)** in view of **Lueck et al. (U.S. Patent # 6,721,710 B1)** and further in view of **Fritsch (U.S. Patent # 6,247,130 B1)**.

Consider **claim 56**, Rydbeck et al. clearly show and disclose a cellular telephone 10 (communication device) (figures 1 and 2) comprising:

an entertainment (memory/processor) module 50 (figures 2 and 3) operable to store and play one or more audio files (e.g., music or audio signals) (abstract, page 2 line 20 - page 3 line

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3, page 6 lines 3-17, and page 7 line 22-25);

an RF transceiver 18 (communication module) (figure 2) operable to receive an audio file (e.g., music or audio signals) selected by a user accessing an Internet website (i.e., inherent through the Internet-enabled cellular phone 10) accessible external to the cellular telephone 10 (cellular communication device) and operable to provide the user access to plural audio files (e.g., music or audio signals) (abstract, page 2 line 20 - page 3 line 3, page 6 lines 3-17, and page 7 line 22-25); and

a low power RF carrier communication module (not shown) operable to communicate an in process playing of at least one of the audio files (e.g., music or audio signals) or a telephonic communication to a headset 40 (wireless speaker) (figures 1 and 2, page 3 lines 4-7, page 5 line 19 - page 6 line 8, and page 7 lines 4-8).

However, Rydbeck et al. do not specifically disclose that the low power RF carrier communication module is a Bluetooth communication module.

Nonetheless, the Examiner takes Official Notice that it is notoriously well known in the art to use a Bluetooth communication module for short range, low power RF communications between communication devices.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a Bluetooth communication module, as known in the art, as the low power RF carrier communication module disclosed by Rydbeck et al. for the purpose of providing standardized short range RF communication between the headset and the cellular telephone.

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However, Rydbeck et al., as modified above, do not specifically disclose that the entertainment (memory/processor) module 50 store and play plural audio formats of audio files.

Nonetheless, the feature of a memory and a processor operable to store and play, respectively, plural audio formats of audio files is well known in the art as evidenced by Lueck et al., who, in the same field of endeavor, clearly show and disclose a portable digital audio player 100 (figure 1) comprising, among other components, a flash memory 140 and a processor 110 (figure 1) operable to store and play, respectively, plural audio formats (e.g., MP3 and AAC) of one or more audio files or songs (column 2 lines 61-67 and column 3 lines 10-12 and 47-51).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to store and play plural audio formats of one or more audio files, as taught by Lueck et al., in the entertainment (memory/processor) module 50 disclosed by Rydbeck et al. for the purpose of providing alternative audio formats for user's selection.

Nonetheless, Rydbeck et al., as modified by Lueck et al., do not specifically disclose that the user access to the Internet website is through a user login page.

In the same field of endeavor, Fritsch clearly shows and disclose a system and method for requesting and downloading songs (audio files) from an Internet website via a cellular communication device (abstract and column 2 line 64 - column 3 line 2) wherein access to the songs (plural audio files) in the Internet website is provided to the user via a user login page (figures 1A-1C, column 3 lines 10-19 and 30-32, and column 4 lines 16-30).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide access to the Internet website via a user login page, as taught

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by Fritsch, in the cellular telephone (communication device) disclosed by Rydbeck et al., as modified by Lueck et al., for authentication and security purposes.

Consider **claim 57**, and **as applied to claim 56 above**, Rydbeck et al., as modified by Lueck et al. and as further modified by Fritsch, further show and disclose:

a headset 40 (output means) (figure 1) for providing an audio output (page 5 line 19 - page 6 line 8);

input means (keypad 30 and display 32) (figures 1 and 2) for selecting the audio file (page 5 lines 12-15 and page 7 line 1-6); and

browsing means (not shown but inherent since the telephone is Internet-enabled) for viewing available preformatted audio and media files (e.g., music or audio signals available for downloading in the Internet) (page 6 lines 10-17).

Consider **claim 58**, and **as applied to claim 56 above**, Rydbeck et al., as modified by Lueck et al. and as further modified by Fritsch, also show and disclose a removable ROM 56 (memory device) (figure 2) operable to store at least one audio file (page 6 line 5 - page 7 line 4)

10. **Claim 61** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Rydbeck et al. (WO 99/43136)** in view of **Shanahan (U.S. Patent # 6,496,692 B1)**.

Consider **claim 61**, and **as applied to claim 60 above**, Rydbeck et al. further disclose:

receiving the second audio file independent of the incoming cellular telephone call (i.e., the music or audio signals (files) can be received from a computer through the Internet or a CD player (abstract, figures 1 and 2, page 2 lines 20-22, page 3 lines 4-6, page 6 lines 3-25, page 7

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lines 1-6, and page 7 lines 22-25); and

storing the second audio file within the memory 54, 56 (abstract, figures 1-3, page 2 lines 20-22, and page 6 lines 3-25).

However, Rydbeck et al. do not specifically disclose playing the second audio file after detecting the incoming cellular telephone call.

In the same field of endeavor, Shanahan clearly shows and discloses an electronic device operable to play a music file in response to an incoming wireless (cellular) telephone call wherein the music file has been received independent of the incoming wireless (cellular) telephone call (abstract, figures 1 and 5-7, column 2 line 65 - column 3 line 40, column 7 line 60 - column 8 line 5, column 8 line 64 - column 9 line 2, and column 9 line 61 - column 10 line 17).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to, in response to an incoming cellular telephone call as taught by Shanahan, play a music file in the device taught by Rydbeck et al. for the purpose of provide distinctive incoming call alerting.

11. **Claims 63-67** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Rydbeck et al. (WO 99/43136)** in view of **Cao et al. (U.S. Patent Application Publication # 2005/0054379 A1)**.

Consider **claims 63 and 65**, and as applied to **claim 59 above**, Rydbeck et al. clearly show and disclose the claimed invention except enabling access to a streaming media link within a user interface of the cellular telephone 10 (communication device); detecting selection of the

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streaming media link; and receiving the streaming media link, wherein the streaming media link comprises streaming audio (claim 65).

In the same field of endeavor, Cao et al. clearly show and disclose a method and a cordless telephone (communication device) with MP3 player capability (abstract) comprising, among other steps, the steps of: enabling access to a streaming media link (MP3 audio stream available in the Internet) within a user interface of the cordless telephone (communication device) (abstract, figure 4, and paragraphs 0019, 0026, and 0050-0054); detecting selection of the streaming media link and receiving the streaming media link (abstract, figure 4, and paragraphs 0019, 0026, and 0050-0054), wherein the streaming media link comprises streaming audio (i.e., MP3 stream audio) (reads on **claim 65**).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to enable access to a streaming media link, as taught by Cao et al., in the method disclosed by Rydbeck et al. for the purpose of providing alternative audio formats for user's selection.

Consider **claims 64 and 67**, and as **applied to claims 63 and 65 above**, Rydbeck et al., as modified by Cao et al., further disclose altering playing of the streaming media in response to detecting the cellular telephone call (page 7 lines 6-8).

Consider **claim 66**, and as **applied to claim 63**, Rydbeck et al., as modified by Cao et al., also disclose the step enabling access to broadcast video (page 9 line 21 - page 10 line 2).

12. **Claim 71** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Fritsch (U.S.**

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Patent # 6,247,130 B1) in view of **Rydbeck et al. (WO 99/43136).**

Consider **claim 71**, and **as applied to claim 68 above**, Fritsch clearly shows and discloses the claimed invention except that the cellular communication device is operable to alter playing of the audio file in response to receiving a telephonic communication communicated via the wireless communication network.

In the same field of endeavor, Rydbeck et al. clearly show and disclose a cellular telephone 10 (communication device) (figures 1 and 2) operable to play an audio file received via a cellular communication (e.g., playback music or audio downloaded and received via transceiver 12, 18 from the Internet) (abstract, figures 1 and 2, page 2 lines 20-22, page 3 lines 4-6, page 6 lines 3-5 and 10-17, page 7 lines 1-6, and page 7 lines 22-25) and alter playing of the audio file in response to detecting an incoming cellular telephone call (page 7 lines 6-8).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to alter playing of the audio file in response to an incoming telephone call, as taught by Rydbeck et al., in the cellular telephone disclosed by Fritsch for the purpose of avoiding missing telephone calls.

13. **Claim 77** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Fritsch (U.S. Patent # 6,247,130 B1).**

Consider **claim 77**, and **as applied to claim 69 above**, Fritsch clearly show and disclose the claimed invention except that the Internet website is a WAP enabled Internet website.

Nonetheless, the Examiner takes Official Notice that it is notoriously well known in the

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art to provide WAP enabled Internet websites for accessing by cellular telephones utilizing WAP browsers.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide a WAP enabled Internet website, as known in the art, in the system disclosed by Fritsch for the purpose of providing standardized wireless Internet access to the cellular telephone.

14. **Claims 78-80** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Fritsch (U.S. Patent # 6,247,130 B1)** in view of **Bottum (U.S. Patent # 6,014,569)**.

Consider **claims 78-80**, and **as applied to claim 68 above**, Fritsch clearly shows and discloses the claimed invention except that the server (digital engine) is operable to provide access to an on-line radio or video broadcast.

In the same field of endeavor, Bottum clearly shows and discloses a wireless communication system comprising an audio/video data provider (digital engine) 110 providing access, to a wireless communication device 150, to on-line audio or video broadcast (figures 1 and 2, column 4 lines 27-48, column 5 line 55 - column 6 line 3, and column 7 lines 58-60).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide access to an online broadcast, as taught by Bottum, in the system disclosed by Fritsch for the purpose of providing a variety of content to the user.

15. **Claim 81** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Fritsch (U.S.**

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Patent # 6,247,130 B1 in view of **Bottum (U.S. Patent # 6,014,569)**, as applied to **claim 78 above**, and further in view of **Rydbeck et al. (WO 99/43136)**.

Consider **claim 81**, and as applied to **claim 78 above**, Fritsch, as modified by Bottum, clearly shows and discloses the claimed invention except that the cellular communication device is operable to alter playing of an accessed broadcast in response to an incoming cellular telephone call.

In the same field of endeavor, Rydbeck et al. clearly show and disclose a cellular telephone 10 (communication device) (figures 1 and 2) operable to play a radio or TV broadcast received via a cellular communication (abstract, figures 1 and 2, page 2 lines 20-22, page 3 lines 4-6, page 6 lines 3-5 and 10-17, page 7 lines 1-6, page 7 lines 22-25, and page 9 line 21 - page 10 line 2) and alter playing of the broadcast in response to detecting an incoming cellular telephone call (page 7 lines 6-8).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to alter playing of the broadcast in response to an incoming telephone call, as taught by Rydbeck et al., in the cellular telephone disclosed by Fritsch, as modified by Bottum, for the purpose of avoiding missing telephone calls.

Response to Arguments

16. Applicant's arguments with respect to **claims 40-81** have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

17. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Valentine et al. (WO 98/19480) disclose a method and apparatus for downloading tones to mobile terminals;

Emiko (JP 10-173737) discloses personal equipment;

Ito (EP 0 898 378) discloses a wireless information communication method and device;

Kim (KR 1999-024210 and WO 00/38340) discloses an apparatus and method for storing and playing back of digital audio data on wireless mobile terminal;

Kurakake (U.S. Patent # 5,900,564) discloses a music data processing apparatus with communication interface and graphic user interface;

Kim (KR 1999-0033726) discloses a voice-reproducible portable phone;

Jackson (U.S. Patent # 6,516,466 B1) discloses a method and apparatus for portable digital entertainment system;

Aarnio (U.S. Patent Application Publication # 2004/0078274 A1) discloses an on-line subscription system and method; and

Yukie et al. (U.S. Patent # 6,956,833 B1) disclose a method, system and devices for wireless data storage on a server and data retrieval.

18. Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

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19. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rafael Perez-Gutierrez whose telephone number is (571) 272-7915. The Examiner can normally be reached on Monday-Thursday from 6:30am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Marsha D. Banks-Harold can be reached on (571) 272-7905. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-

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2600.


Rafael Perez-Gutierrez
R.P.G./rpg **RAFAEL PEREZ-GUTIERREZ**
 PRIMARY EXAMINER

November 15, 2005